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IN CLERK'S OFFICE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

U. S. DISTRICT COURT
OF MASSACHUSETTS

UNITED STATES OF AMERICA

Crim. No. 04-30046-MAP

v.

MARK McCARTHY, ET AL
Defendants

MOTION OF THE DEFENDANT, MARK McCARTHY, TO CONTINUE SENTENCING

NOW COMES the Defendant, MARK McCARTHY, in the above-captioned criminal matter and respectfully moves this Honorable Court for an Order continuing the sentencing date presently scheduled for October 13, 2006, and to extend accordingly the present Scheduling Order.

AS REASONS THEREFOR, the Defendant, MARK McCARTHY, through counsel, states that on April 20, 2006, the Defendant pled guilty to Counts 16, 23, 38 and 69, of the Superceding Indictment.

SUBSEQUENTLY, the Court set a Scheduling Order that required the Government to provide the U.S. Probation Office, and simultaneously serve on defense counsel, a statement of relevant facts and any other documents pertinent under Rule 32(d) of the Federal Rules of Criminal Procedure no later than May 25, 2006.

ON OR BEFORE May 25, 2006, the Government did not submit a statement of relevant facts. Indeed, the Government did not furnish to the U.S. Probation Office the statement of relevant facts until August 15, 2006, which was received by defense counsel on August 16, 2006.

ON AUGUST 21, 2006, the Government served upon defense counsel a thirty-seven (37) page attachment not previously included in any submittals by the Government, which purportedly contains a list of alleged fraudulent loans processed through the law office of co-defendant ALBERT INNARELLI.

IT APPEARS THE Government will argue that any additional loans where the Defendant received a check from Mr. Innarelli's IOLTA account should be applied to the Defendant and should constitute relevant conduct for purposes of the advisory sentencing guidelines.

IN ORDER for the Defendant to respond adequately to the Government's assertion that he is responsible for any alleged loss related to properties outside the Superseding Indictment, he must be permitted a reasonable opportunity to discover any factual basis relied upon by the Government to establish the Defendant's relevant conduct.

WHEREFORE, Defendant, Mark McCarthy, prays said Motion be allowed.

THE DEFENDANT,
MARK McCARTHY

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CERTIFICATE OF SERVICE

I, ROBERT T. SANTANIELLO, ESQ., hereby certify that copy of the foregoing has been mailed, first class mail, postage prepaid, this 25th day of August, 2006, to:

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